

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1500 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge?

No

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NILKANTHRAI JIVANLAL RAVAL

Versus

COMPETENT AUTHORITY AND ADDL.COLLECTOR ULC & ANR.

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Appearance:

Shri J.R. Nanavaty, Advocate, for the Petitioner  
Shri T.H. Sompura, Asst. Govt. Pleader, for the Respondents

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CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 24/06/96

ORAL JUDGEMENT

The order passed by the Competent Authority at Rajkot (respondent No. 1 herein) on 18th May 1988 under sec. 21(2) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad (respondent No. 2 herein) on 4th October 1988 in Appeal

No. Rajkot-45 of 1988 is under challenge in this petition under art. 226 of the Constitution of India. By his impugned order, respondent No. 1 cancelled the permission granted under sec. 21(1) of the Act on 25th March 1983 with respect to certain parcels of land from Survey No. 18 (part) in all admeasuring 7339.73 square meters situated at Nanamava within the urban agglomeration of Rajkot (the disputed lands for convenience).

2. The facts giving rise to this petition move in a narrow compass. The petitioner applied for permission under sec. 21(1) of the Act with respect to the disputed lands. He submitted the necessary scheme thereunder. By his order passed on 25th March 1983 under sec. 21(1) of the Act, respondent No. 1 granted such permission on certain terms and conditions. The petitioner was required in all to raise 62 residential units for weaker sections of the society. One of the conditions was to start the construction work within one year from the date of the order under intimation to respondent No. 1 and to complete it within 5 years from that date. Another condition required the petitioner to get the construction plans approved by and the building permission obtained from the concerned authority. A copy of the aforesaid order passed on 25th March 1983 is at Annexure A to this petition. It appears that the petitioner thereafter moved the Rajkot Urban Development Authority (the RUDA for convenience) for approval of the construction plans and grant of the building permission. By the order passed on 7th June 1984, the RUDA granted such permission with the modification that only 38 residential units can be constructed in the disputed lands. Its copy is at Annexure B/3 to this petition. Thereupon the petitioner moved respondent No. 1 on 5th July 1984 for modification of the order at Annexure A to this petition in terms of the building permission granted by the RUDA. Its copy is at Annexure C to this petition. It appears that the matter was referred to the Superintending Engineer as the specified authority. By his communication of 6th September 1985, the specified authority informed respondent No. 1 that in all 54 residential units can be constructed in the disputed lands as against the approval for 38 residential units granted by the RUDA. Its copy is at Annexure D to this petition. Thereupon respondent No. 1 issued one show-cause notice of 2nd June 1987 calling upon the petitioner to show cause why the permission at Annexure A to this petition should not be cancelled on the ground that the construction activity was not commenced within one year from the date thereof. Its copy is at Annexure E to this petition. The

petitioner appears to have filed his reply thereto and thereafter he was given an opportunity of hearing. By his order passed on 18th May 1988 under sec. 21(2) of the Act, respondent No. 1 cancelled the permission granted by the order at Annexure A to this petition. A copy of the aforesaid order passed on 18th May 1988 is at Annexure F to this petition. The aggrieved petitioner carried the matter in appeal before respondent No. 2 under sec. 33 of the Act. It came to be registered as Appeal No. Rajkot-45 of 1988. By the order passed on 4th October 1988 in the aforesaid appeal, respondent No. 2 dismissed it. Its copy is at Annexure G to this petition. The aggrieved petitioner has thereupon approached this Court by means of this petition under art. 226 of the Constitution of India for questioning the correctness of the order at Annexure F to this petition as affirmed in appeal by the appellate order at Annexure G to this petition.

3. It is strange and surprising that neither respondent No. 1 nor respondent No. 2 considered the fact that it was impossible for the petitioner to commence any construction activity within the stipulated time-limit in view of the building permission granted by the RUDA at Annexure B/3 to this petition. Even at the cost of repetition, it may be reiterated that the scheme sanctioned by respondent No. 1 by the order at Annexure A to this petition was for 62 residential units for weaker sections of the society. The RUDA however granted the building permission only for 38 residential units even after referring to the scheme sanctioned by the order at Annexure A to this petition. It may be mentioned at this stage that the date of the permission granted by the RUDA is 7th June 1984. Immediately thereafter the petitioner moved respondent No. 1 on 5th July 1984 by his communication at Annexure C to this petition for revision of the scheme sanctioned by the order at Annexure A to this petition. The specified authority however opined that 54 residential units can be constructed in the disputed lands by his communication at Annexure D to this petition. Without attempting to revise the scheme and directing the petitioner to approach the RUDA for the revised scheme, respondent No. 1 appears to have found out a way for cancellation of the permission at Annexure A to this petition for the alleged breach of the condition regarding the time-limit for commencement of the construction activity. It is unfortunate that respondent No. 2 as the appellate authority has also not taken into consideration this aspect of the case and has practically blindly and mechanically affirmed the order at Annexure F to this

petition. Such an approach on the part of the respondents cannot be sustained in law even for a moment.

4. Even otherwise, for breach of the condition regarding non-commencement of construction within the time-limit of one year can never be a ground for cancellation of such permission in view of the binding ruling of this Court in the case of Kanaiyalal Maneklal Sheth v. Competent Authority and Additional Collector (Ceiling), Rajkot and Another reported in AIR 1994 Gujarat 130. It has clearly been held therein that the condition as to commencement of the time-limit can never be imposed by the Competent Authority while granting the permission under sec. 21(1) of the Act.

5. In view of my aforesaid discussion, I am of the opinion that the impugned order at Annexure F to this petition as affirmed in appeal by the appellate order at Annexure G to this petition cannot be sustained in law. It has to be quashed and set aside. The matter deserves to be remanded to respondent No. 1 for restoration of the proceeding to file and for his fresh decision regarding revision of the scheme sanctioned by the order at Annexure A to this petition in the light of the permission granted by the RUDA at Annexure B/3 to this petition. If the specified authority is of the opinion that 54 residential units can be constructed in the disputed lands, the petitioner may be asked to move the RUDA for revision of the building permission if necessary. Neither respondent No. 1 nor respondent No. 2 can direct the petitioner to perform an impossibility by raising 62 residential units in terms of the permission at Annexure A to this petition or 54 residential units in terms of the communication emanating from the specified authority at Annexure D to this petition as against the permission granted by the RUDA at Annexure B/3 to this petition.

6. In the result, this petition is accepted. The order passed by the Competent Authority at Rajkot (respondent No. 1 herein) on 18th May 1988 under sec. 21(2) of the Act at Annexure F to this petition as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad on 4th October 1988 in Appeal No. Rajkot-45 of 1988 at Annexure G to this petition is quashed and set aside. The matter is remanded to respondent No. 1 for restoration of the proceeding to file and for his appropriate action in the light of this judgment of mine. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.

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